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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of)
)
WESTEL SAMOA, INC.) WT Docket No. 97-199
)
For Broadband Block C Personal)
Communications Systems Facilities)
)
and)
)
WESTEL, L.P.)
)
For Broadband Block F Personal)
Communications Systems Facilities)
)
To: Administrative Law Judge
Arthur I. Steinberg

CONTINGENT MOTION FOR ACCEPTANCE
OF LATE-FILED PLEADING

Anthony T. Easton, by his attorneys, hereby respectfully requests that his Motion for Protective Order, filed simultaneously herewith, be accepted and considered by the Presiding Officer in the event the motion is deemed to have been filed out of time. In support of that contingent request, Mr. Easton respectfully submits the following:

The undersigned called counsel for the Bureau on November 5, 1997, to discuss possible stipulations with regard to Mr. Easton's deposition and to obtain information necessary to complete his motion for a protective order. In addition, undersigned counsel conveyed Mr. Easton's request that he be deposed in Washington, D. C., if his deposition is to be taken. Bureau counsel indicated that he would provide the requested information and that he would call back with respect to whether the Bureau would be willing to take Mr. Easton's deposition in Washington.

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While waiting for the Bureau's response, the undersigned was informed by Mr. Easton that he would not be available for a deposition in San Francisco on November 19, 1997. Moreover, he stated that the Bureau's Notice of Deposition had been delivered to him by Federal Express on Monday, November 3, 1997.

Counsel was unable to contact Bureau counsel to determine how Mr. Easton was served and to discuss the possibility that his deposition (if permitted) could be rescheduled to be taken in Washington at a mutually agreeable date. Unfortunately, the undersigned also did not receive the information requested from the Bureau, which delayed the preparation of Mr. Easton's motion. However, counsel thought that the motion was due within seven days after service of the Notice of Deposition on Mr. Easton. See 47 C.F.R. § 1.315(b)(1). Thus, the filing period would run from November 3, 1997, when Federal Express delivered the Bureau's notice to Mr. Easton.

Bureau counsel today confirmed that Mr. Easton received service by Federal Express on November 3, 1997. However, counsel stated that the delay was caused by Federal Express and that the Bureau had delivered the notice to Federal Express in timely fashion on October 29, 1997. In light of those facts, the undersigned may have erred in his interpretation of "service" for the purposes of 47 C.F.R. § 1.315(b)(1).

If the undersigned erred, it was due to his uncertainty as to the date of service and his inability to obtain clarification from the Bureau. However, the resultant one-day delay in filing

Mr. Easton's motion should not prejudice the Bureau or unduly delay discovery. In that regard, the Bureau has indicated its willingness to reschedule Mr. Easton's deposition for December 5, 1997 in Washington.

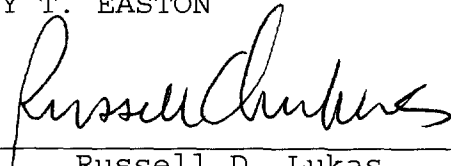
Mr. Easton respectfully submits that grant of this motion (if necessary) would serve the public interest by ensuring that he is allowed to pose a serious objection to the taking of his deposition.

Good cause having been shown, the Presiding Officer is requested to accept and consider Mr. Easton's Motion for Protective Order.

Respectfully submitted,

ANTHONY T. EASTON

By



Russell D. Lukas
Thomas Gutierrez

His Attorneys

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& Gutierrez, Chartered
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Twelfth Floor
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November 6, 1997

CERTIFICATE OF SERVICE

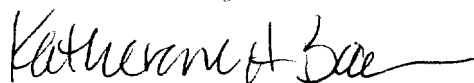
I, Katherine A. Baer, a secretary in the law offices of Lukas, McGowan, Nace & Gutierrez, Chartered, do hereby certify that I have on this 6th day of November, 1997, had a copy of the foregoing CONTINGENT MOTION FOR ACCEPTANCE OF LATE-FILED PLEADING hand-delivered to the following:

Honorable Arthur I. Steinberg
Administrative Law Judge
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